

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 349

Introduced by Assembly Member Gatto

February 13, 2013

An act to add Section 45118 to the Education Code, relating to school administration.

LEGISLATIVE COUNSEL'S DIGEST

AB 349, as amended, Gatto. Classified employees: *allegations of misconduct involving a child*: *misconduct*: reports.

Existing law authorizes the governing board of a school district to lay off and reemploy classified employees in accordance with specified procedures. Existing law requires classified employees subject to a layoff, to be effective at the end of the school year, to be given written notice on or before April 29 informing them of the layoff and of any displacement and reemployment rights.

This bill would require the superintendent of the employing school district or a charter school administrator to report a change in employment status to the State Department of Education when a classified employee is dismissed, is suspended, resigns, retires, or is otherwise terminated by a decision not to employ or reemploy, as a result of allegations of misconduct ~~involving a child~~, as defined. The bill would require the report to the department to contain all known information about each alleged act of misconduct, as specified, and would require the department to maintain the report by county and by

the employee's name in a searchable format. The bill would require the department to establish due process procedures for purposes of removing a classified employee's name from the reports, as provided, and procedures for determining whether a decision to dismiss, suspend, or not to employ or reemploy a classified employee, or when an employee resigns or retires, as a result of an allegation of misconduct ~~involving a child~~ or while an allegation of misconduct ~~involving a child~~ is pending are proven unfounded or substantiated, as the bill would define those terms. By imposing a new duty on a school district or charter school, the bill would create a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature that the State
- 2 Department of Education and the Commission on Teacher
- 3 Credentialing enter into an interagency agreement for a minimum
- 4 of three years, in order for the commission to provide assistance
- 5 to the department in administering Section 45118 of the Education
- 6 Code.
- 7 SEC. 2. Section 45118 is added to the Education Code, to read:
- 8 45118. (a) (1) When a classified employee is dismissed,
- 9 resigns, is suspended, retires, or is otherwise terminated by a
- 10 decision not to employ or reemploy, as a result of an allegation of
- 11 misconduct ~~involving a child~~ or while an allegation of misconduct
- 12 ~~involving a child~~ is pending, the superintendent of the employing
- 13 school district or a charter school administrator shall report the

1 change in employment status to the department no later than 30
2 days after the employment action.

3 (2) “Otherwise terminated by a decision not to employ or
4 reemploy” as used in paragraph (1) shall not include or be
5 interpreted to include a change of status that is solely for a layoff
6 as described in Section 45308.

7 (b) For purposes of the this section, “~~allegation of misconduct~~
8 ~~involving a child~~” *misconduct*” means misconduct that involves
9 any of the acts described in ~~Sections 11165.2 to 11165.6, inclusive,~~
10 ~~of the Penal Code and Section 44010, and that involves aiding or~~
11 ~~abetting the unlawful sale to, use by, or exchange to minors of a~~
12 ~~controlled substance listed in Schedule I, II, or III as included in~~
13 ~~Sections 11054, 11055, and 11056 of the Health and Safety Code.~~
14 *the following sections:*

15 (1) *Sections 187, 188, 189, and 192, as this section relates to*
16 *voluntary manslaughter, Sections 203, 205, 206, 207, 209 to 211,*
17 *inclusive, 214, 215, 217, 1, 220, 222, 244, 245, 261, 261.5, 262,*
18 *265 to 266j, inclusive, 267, 273a, 273ab, 273d, 273f, 273g, 278,*
19 *285, 286, 286.5, 288, 288.2 to 288a, inclusive, 424, 425, 503, 504,*
20 *and 11165.2 to 11165.6, inclusive, of the Penal Code.*

21 (2) *Sections 484, 484.1, 484b, 484c, and 484e to 488, inclusive,*
22 *of the Penal Code, as these sections relate to felony convictions.*

23 (3) *Section 44010 of this code.*

24 (4) *Any act that involves a controlled substance offense, as*
25 *described in Section 44011 of this code, that involves a minor.*

26 (c) For purposes of this section, the term “school district”
27 includes a county office of education.

28 (d) The report shall contain all known information about each
29 alleged act of misconduct and shall include all of the following:

- 30 (1) The name of the classified employee.
31 (2) The current address of the classified employee.
32 (3) The name of the reporting school district or charter school.
33 (4) The name of the last school of employment.
34 (5) An explanation of the allegation of misconduct or pending
35 allegation of misconduct.
36 (6) Current contact information for all persons who may have
37 information relating to allegation of misconduct.
38 (7) Any and all documentation related to the case.
39 (e) The report shall be made to the department regardless of any
40 proposed or actual agreement, settlement, or stipulation not to

1 make such a report. The report shall also be made if allegations of
2 misconduct ~~involving a child~~ served on the employee are
3 withdrawn in consideration of the employee's resignation,
4 retirement, or other failure to contest the truth of the allegations.
5 The department shall maintain these reports by county and by the
6 employee's name, in a searchable format. This information shall
7 not be made available to the general public.

8 (f) The superintendent of an employing school district or a
9 charter school administrator shall, in writing, inform a classified
10 employee of the content of this section if that employee is
11 dismissed, resigns, is suspended, retires, or is otherwise terminated
12 by a decision not to employ or reemploy, as a result of an allegation
13 of misconduct ~~involving a child~~ or while an allegation of
14 misconduct ~~involving a child~~ is pending.

15 (g) The department shall establish due process procedures ~~with~~
16 *for* the purpose of removing a classified employee's name from
17 the reports maintained pursuant to subdivision (e). These
18 procedures shall include, but not be limited to, a timeframe for
19 how long a classified employee's name shall be included in the
20 reports maintained pursuant to subdivision (e).

21 (h) (1) The department shall establish procedures to determine
22 whether a decision to dismiss, suspend, or not to employ or
23 reemploy a classified employee, or when an employee resigns or
24 retires, as a result of an allegation of misconduct ~~involving a child~~
25 or while an allegation of misconduct ~~involving a child~~ is ~~pending~~
26 *are pending, is* proven unfounded or substantiated. If the
27 department determines the allegation of misconduct ~~involving a~~
28 ~~child are is~~ proved unfounded, the classified employee's name
29 shall not be included in reports established pursuant to this section.

30 (A) For purposes of this ~~section~~ *section*, "unfounded" means a
31 report that is determined by the department to be false, to involve
32 an accidental injury, or to not constitute misconduct ~~involving a~~
33 ~~child~~ as defined in subdivision (b), *based on the preponderance*
34 *of the evidence*.

35 (B) For purposes of this ~~section~~ *section*, "substantiated" means
36 a report determined by the department to constitute misconduct
37 ~~involving a child~~, based upon *a preponderance of the evidence*
38 ~~that makes it more likely than not that misconduct, as described~~
39 ~~in subdivision (b), occurred~~.

1 (2) If a school district or charter school initiates an investigation
2 against a classified employee for allegations ~~involving a child of~~
3 *misconduct* as defined in this section, the school district or charter
4 school shall provide the department with all relevant information
5 pertinent to this investigation.

6 *SEC. 3. The Legislature finds and declares that this act imposes*
7 *a limitation on the public's right of access to the meetings of public*
8 *bodies or the writings of public officials and agencies within the*
9 *meaning of Section 3 of Article I of the California Constitution.*
10 *Pursuant to that constitutional provision, the Legislature makes*
11 *the following finding to demonstrate the interest protected by this*
12 *limitation and the need for protecting the interest:*

13 *In order to protect sensitive employment matters, it is necessary*
14 *that this act take effect with the limitation on public access to*
15 *certain reports as specified in subdivision (e) of Section 45118 of*
16 *the Education Code.*

17 ~~SEC. 3.~~

18 *SEC. 4. If the Commission on State Mandates determines that*
19 *this act contains costs mandated by the state, reimbursement to*
20 *local agencies and school districts for those costs shall be made*
21 *pursuant to Part 7 (commencing with Section 17500) of Division*
22 *4 of Title 2 of the Government Code.*